

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE APPLICATION FEE FOR PROFESSIONAL
7 EMPLOYER ORGANIZATIONS; INCREASING THE RENEWAL FEE FOR PROFESSIONAL EMPLOYER
8 ORGANIZATIONS; REQUIRING NOTICE TO LEASED EMPLOYEES AND THE DEPARTMENT BEFORE
9 REDUCING THE RATE OF PAY FOR LEASED EMPLOYEES; REQUIRING CLIENT SERVICE CONTRACTS TO
10 BE SENT TO THE DEPARTMENT OF LABOR AND INDUSTRY; REQUIRING THAT WORKERS'
11 COMPENSATION INSURERS OF PROFESSIONAL EMPLOYER ORGANIZATIONS ISSUE SEPARATE POLICY
12 NUMBERS FOR EACH CLIENT COMPANY; AMENDING SECTIONS 39-8-202, 39-8-205, 39-8-207, AND
13 39-8-403, MCA; AND PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 39-8-202, MCA, is amended to read:

18 **"39-8-202. Initial license application -- application fee -- standards.** (1) An applicant for initial
19 licensure as a professional employer organization or group shall file with the department a completed
20 application on a form provided by the department.

21 (2) The application must be accompanied by a nonrefundable application fee and any material or
22 information required by the department that demonstrates compliance with the requirements of this
23 chapter. The application fee is:

24 (a) ~~\$750~~ \$1,500 for a resident or nonresident unrestricted license; and

25 (b) ~~\$500~~ \$1,500 for a restricted license.

26 (3) As a condition of licensure under this chapter, an applicant who is not a resident or who is
27 domiciled outside the state must first be licensed as a professional employer organization or group in the
28 state in which the applicant is a resident or is domiciled if licensing is required by that state.

29 (4) An applicant for licensure as a professional employer organization or group shall meet the
30 following standards:

1 (a) An individual must be 18 years of age or older.

2 (b) A partnership or a limited partnership shall provide the names and home addresses of all
3 partners, indicate whether each partner is a general or a limited partner, and include a copy of the
4 partnership agreement or an affidavit signed by all partners acknowledging that no written partnership
5 agreement exists.

6 (c) A corporation shall state the names and home addresses of all officers, directors, and
7 shareholders who own a 5% or greater interest in the corporation and provide a certificate of good
8 standing from the secretary of state demonstrating that the corporation is qualified to do business in this
9 state.

10 (d) A limited liability company shall state the names and home addresses of those individuals who
11 own a 5% or greater interest in the limited liability company and provide a certificate of good standing
12 from the secretary of state demonstrating that the company is qualified to do business in this state.

13 (e) A group:

14 (i) must be authorized to act on behalf of the group;

15 (ii) shall include for each professional employer organization within the group the information
16 required in subsection (4); and

17 (iii) shall guarantee, on a form provided by the department and executed by each professional
18 employer organization within the group, payment of all financial obligations with respect to wages,
19 payroll-related taxes, insurance premiums, and employee benefits of each other member within the group.

20 (5) An applicant shall also provide:

21 (a) the trade name or names under which the applicant conducts business, the business's taxpayer
22 or employer identification number, the address of the business's principal place of business in the state,
23 and the addresses of any other offices within the state through which the applicant intends to conduct
24 business as a professional employer organization or group. If the applicant's principal place of business is
25 located in another state, the address must be provided.

26 (b) a list by jurisdiction of each name under which the applicant has operated in the preceding 5
27 years, including any alternative names, names of predecessors, and names of related business entities with
28 common majority ownership, and detailed information on the background of each controlling person to the
29 extent required by the department; and

30 (c) other information requested by the department to show that the applicant and each controlling

1 person are of good moral character, have business integrity, and are financially responsible. "Good moral
2 character" means a personal history of honesty, trustworthiness, and fairness; a good reputation for fair
3 dealings; and respect for the rights of others and for the laws of this state and nation.

4 (6) Except for an applicant who is granted a restricted license under subsection (8), an applicant
5 shall maintain a tangible accounting net worth of not less than \$50,000, evidenced by providing a financial
6 statement prepared in accordance with generally accepted accounting principles and accompanied by a
7 compilation report by an independent certified public accountant. Documents submitted to establish net
8 worth must reflect net worth as of a date not more than 6 months prior to the date on which the
9 application is submitted. A financial statement submitted must be attested by the president, chief financial
10 officer, and at least one controlling person of the professional employer organization or group. In meeting
11 the specified net worth requirement, the applicant may provide to the department a surety bond, letter of
12 credit, or marketable securities acceptable to the department. A surety will not be acceptable to satisfy
13 this requirement unless the applicant submits sufficient evidence to satisfy the department that the surety
14 has adequate resources to satisfy the obligations of the surety. A surety is subject to audit or verification
15 by the department or its agent.

16 (7) The applicant shall maintain a positive working capital, as determined in accordance with
17 generally accepted accounting principles.

18 (8) The department may issue a restricted license for limited operation within this state to a
19 professional employer organization or group that is a resident of or domiciled in another state if:

20 (a) the applicant's state of residence or domicile provides for licensing of professional employer
21 organizations or groups, the applicant is licensed and in good standing in the state of residence or domicile,
22 and that state grants a similar privilege for restricted licensing to professional employer organizations or
23 groups that are residents of or domiciled in this state and that are licensed under this chapter;

24 (b) the applicant does not maintain an office, a sales force, or a sales representative in this state
25 and does not solicit clients who are residents of or domiciled in this state; and

26 (c) the applicant does not have more than 100 leased employees working in this state.

27 (9) An applicant for a nonresident or restricted license shall file, on a form provided by the
28 department, an appointment of a recognized and approved entity as its attorney to receive service of legal
29 process issued against it in this state.

30 (10) A license issued under this section remains the property of the department and may not be

1 transferred."

2

3 **Section 2.** Section 39-8-205, MCA, is amended to read:

4 **"39-8-205. Renewal fees.** (1) The fee for the renewal of a resident or nonresident unrestricted
5 license is ~~\$750~~ \$1,500.

6 (2) The fee for the renewal of a restricted license is ~~\$500~~ \$1,500.

7 (3) The application fee required in 39-8-202 does not apply to the renewal of an unrestricted
8 license.

9 (4) A restricted license may not be granted to a professional employer organization or group that
10 is a resident of or domiciled in another state if the state requires licensing but does not grant a similar
11 privilege for restricted licensing to a licensee who is a resident of or domiciled in this state.

12 (5) Fees collected must be used by the department to implement this chapter."

13

14 **Section 3.** Section 39-8-207, MCA, is amended to read:

15 **"39-8-207. Requirements of licensee.** (1) A professional employer organization or group shall, by
16 written contract with the client, establish the responsibilities and duties of each party. The contract must
17 disclose to the client:

18 (a) the services provided, the administrative fee, and the respective rights and obligations of the
19 parties;

20 (b) a statement providing that the professional employer organization or group:

21 (i) reserves a right of direction and control over employees assigned to the client's location. The
22 client may retain sufficient direction and control over employees necessary to conduct business and
23 without which the client would be unable to conduct business, discharge fiduciary responsibilities, or
24 comply with state licensing laws.

25 (ii) assumes responsibility for the payment of wages of employees, workers' compensation
26 premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments
27 by the client; and

28 (iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
29 to accept or cancel the assignment of an employee.

30 (c) a statement that, with respect to a worker supplied to a client by a professional employer

1 organization or group, the client shares joint and several liability for any wages, workers' compensation
2 premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer
3 organization or group and that, in the event that the licensee's license is suspended or revoked, this liability
4 is retroactive to the client's entering into a contract with the licensee; and

5 (d) a statement that the client is responsible for compliance with the Montana Safety Culture Act,
6 Title 39, chapter 71, part 15.

7 (2) The professional employer organization or group shall:

8 (a) give written notice of the general nature of the relationship between the professional employer
9 organization or group and the client to each employee assigned to perform services at the client's place
10 of work. The disclosure must provide that the professional employer organization:

11 (i) reserves a right of direction and control over employees assigned to the client's location. The
12 client may retain sufficient direction and control over employees necessary to conduct business and
13 without which the client would be unable to conduct business, discharge fiduciary responsibilities, or
14 comply with state licensing laws.

15 (ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right
16 to accept or cancel the assignment of an employee.

17 (iii) shall give written notice to an employee and the department at least 2 weeks prior to imposing
18 a reduction in the rate of pay that was customarily paid to that employee when the reason for the
19 reduction is the failure of the client company to pay the fees or payroll to the professional employer
20 organization. A copy of the notice must be sent by certified mail to the department.

21 (b) submit to the department, within 90 days of the end of each calendar quarter, information
22 certified by an independent certified public accountant demonstrating that all payroll-related taxes for the
23 quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for
24 each quarter.

25 (c) maintain and make available for the department or its agent all records relating to the licensee's
26 business conduct. Records must be maintained for 5 years after terminating an employee leasing
27 arrangement or professional employer arrangement.

28 (d) notify the department in writing within 20 days of a change of business address or a change
29 in partners, directors, officers, members, or controlling persons designated in the license;

30 (e) notify the department in writing within 20 days after a client either commences or terminates

1 a professional employer arrangement or an employee leasing arrangement with that professional employer
2 organization or group; ~~and~~

3 (f) send a copy of the signed client service contract with all client company disclosures included
4 to the department within 20 days of the signing of the contract; and

5 (g) post the license issued in a conspicuous place in the principal place of business and display,
6 in clear public view in each licensee's office, a notice stating that the professional employer organization
7 or group is licensed and regulated by the department.

8 (3) When a professional employer organization or group uses a professional employer arrangement
9 with the client, both the professional employer organization or group and the client are the immediate
10 employers of the workers subject to the arrangement for the purposes of the workers' compensation laws
11 of this state. When a professional employer organization or group uses an employee leasing arrangement
12 with the client, the professional employer organization or group is the immediate employer of the workers
13 subject to the arrangement for the purposes of the workers' compensation laws of this state.

14 (4) A professional employer organization or group shall:

15 (a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

16 (b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all
17 records and documents required of employers under the unemployment insurance laws of this state. For
18 unemployment reporting purposes, each professional employer organization is the employing unit, as
19 defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its
20 clients.

21 (c) provide workers' compensation coverage for all employees and provide, maintain, and secure
22 all records and documents required of employers under the workers' compensation laws of this state. A
23 license may not be issued to a professional employer organization or group until the department receives
24 proof of workers' compensation coverage for all employees assigned to any client location in this state.

25 (5) A professional employer organization or group is the employer for sponsoring and maintaining
26 employee benefit and welfare plans. The plans, if limited to employees of the professional employer
27 organization or group, are not multiple employer welfare arrangements.

28 (6) A professional employer organization or group shall disclose to the department, to each client,
29 and to its employees information on any health or life fringe benefit program provided for its employees.
30 The information must include:

1 (a) the type of benefits;

2 (b) the identity of each insurer providing each type of coverage;

3 (c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits
4 will be paid;

5 (d) the policy limits on each insurance policy; and

6 (e) whether coverage is fully insured, partially insured, or fully self-funded.

7 (7) Disclosure required by this section may be made by any written means reasonably calculated
8 to adequately inform the employees, including a summary plan description that meets the requirements
9 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, et seq.), as amended.

10 (8) (a) Subject to any contrary provisions of the contract between the client and the professional
11 employer organization or group, the professional employer arrangement that exists between the parties
12 must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection
13 (8)(b).

14 (b) The professional employer organization or group:

15 (i) is entitled, along with the client, to the exclusivity of the remedy under both the workers'
16 compensation and employers' liability provisions of a workers' compensation policy or plan of either party;
17 and

18 (ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the
19 direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this
20 chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or
21 group or of any employee of a professional employer organization or group acting under the direction and
22 control of the professional employer organization or group.

23 (9) A professional employer organization that applies for workers' compensation coverage shall
24 also maintain and furnish to the insurer sufficient information to permit the calculation of an experience
25 modification factor for each client employer, including but not limited to:

26 (a) the client employer's corporate or business name;

27 (b) the client employer's taxpayer or employer identification number;

28 (c) the client employer's risk identification number;

29 (d) a listing of all employees assigned to each client employer and the applicable classification code
30 and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included by reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance policy unless done through a licensed insurance producer; or

(c) is not exempt under 33-17-103(4).

(12) A sole proprietor or a working member of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless the individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client complies with the provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515."

Section 4. Section 39-8-403, MCA, is amended to read:

"39-8-403. Workers' compensation insurer requirements. (1) An insurer that provides workers' compensation insurance to a professional employer organization shall base classifications and rates

1 applicable to the payroll of a worker who is subject to either a professional employer arrangement or an
2 employee leasing arrangement as though the worker has been a direct employee of the client employer.
3 If an experience modification has been established for the client employer, that experience modification
4 must be audited using the factors in subsection (3) and must be applied by the insurer to the premium for
5 the client employer's workers.

6 (2) The insurer of a professional employer organization shall report to the workers' compensation
7 advisory or rating organization of which the insurer is required to be a member under Title 33, chapter 16,
8 part 10, all data by client, including payroll by classification and liabilities for each client during the term
9 of the policy.

10 (3) An insurer shall audit policies issued to a professional employer organization within 90 days
11 of the policy effective date and may conduct quarterly audits thereafter. The purpose of the audit is to
12 determine whether all classifications, experience modification factors, and estimated payroll used with
13 respect to the development of the premium charged are appropriate.

14 (4) All operations of a client, whether or not all or a portion of the client's operations are subject
15 to a professional employer arrangement or employee leasing arrangement, must be insured by the same
16 insurer.

17 (5) A workers' compensation insurer of a professional employer organization shall issue an
18 individual policy for each client company of the professional employer organization."

19

20 NEW SECTION. **Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are
21 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
22 applications, the part remains in effect in all valid applications that are severable from the invalid
23 applications.

24

25 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2001.

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- END -